


MEMORANDUM

TO: Jimmy Knight, Village Manager
FROM: Leonard G. Rubin, Village Attorney 
RE: Ownership of the Earman River (C-17 Canal)
DATE: January 22, 2010

As you are aware, I spent a great deal of time researching this issue back in 2007 (a copy of my initial memorandum dated May 22, 2007 is attached).

While I cannot conclusively state that such documentation does not exist, I could not find any evidence that North Palm Beach Properties (controlled by the Schwencke family) intended to convey the Earman River to the Village. In 1957, North Palm Beach Properties conveyed the North Palm Beach Waterway, the Azure Lagoon, the Blue Lagoon and the Coral Lagoon in the Village. The Earman River was conspicuously absent. This issue is further complicated by the fact that the Earman River's configuration has changed dramatically since the time Plat No. 1 was recorded in the public records. The entirety of the current configuration of the Earman River is encumbered by a perpetual easement for the exclusive use and enjoyment of what is now the South Florida Water Management District.

The Palm Beach County Property Appraiser's records show North Palm Beach Properties as the owner of the Earman River/C-17 right-of-way from Prosperity Farms Road to the Intracoastal Waterway. The property is divided into two parcels (10.7 acres and 16.5 acres) with a total assessed value of \$8,184.00. The total amount of property taxes assessed for 2009 was \$179.53.

Various property owners have already paid the Schwencke family for easements to construct docks on the Earman River. For Plat No. 1 (Anchorage Lane), these easements included a quit-claim conveyance of property from the edge of the existing lot line to the mean low water line for the Earman River and an easement from the mean low water line into the water. Under the best case scenario, the Schwencke family could dedicate the Earman River right-of-way to the Village, thereby avoiding the need for property owners on both sides of the canal to pay monies or acquire any additional easements to utilize the waterway. I do not believe it appropriate, however, for the Village to acquire property and convey it to individual property owners.

I have no objection to contacting the Schwencke family to see whether they would be interested in dedicating the Earman River to the Village. If you wish me to pursue this matter, please provide me with whatever contact information you may have.

Let me know how you wish for me to proceed.

MEMORANDUM

TO: Jimmy Knight, Village Manager
FROM: Leonard G. Rubin, Village Attorney
RE: Ownership of the Earman River/C-17 Canal Right-of-Way
DATE: May 22, 2007
CC: Mayor Edward M. Eissey
Charles Cangianelli, Community Development Director

In response to concerns raised by property owners, the Village requested that I investigate the ownership of that portion of the Earman River (also known as the C-17 Canal) adjacent to Plat No. 1 (Anchorage Drive and Anchorage Lane), Plat No. 5 (Northlake Boulevard) and the Plat of Palm Beach Lake Worth Estates (Shore Court). Specifically, I was asked to determine whether the Earman/C-17 Right-of-Way was ever dedicated to the Village.

It is my understanding that North Palm Beach Properties, Inc., formerly known as North Palm Beach, Inc., is claiming ownership of the property underlying the Earman/C-17 Right-of-Way and is requiring adjacent property owners who have constructed docks and other improvements within the right-of-way to either pay for such rights or remove the structures. Specifically, I am in receipt of an e-mail from Tom Hogarth, the owner of property located at 3 Anchorage Lane within Plat No. 1, wherein he contends that his lot extends to the center line of the Earman River. Consequently, according to Mr. Hogarth, North Palm Beach Properties cannot claim ownership of the area upon which his particular dock is constructed.

Having conducted a preliminary review of the plats and relevant deeds, it does not appear that the Village has any ownership interest in the property underlying the Earman/C-17 Right-of-Way.

With respect to Plat No. 5 and the Plat of Palm Beach Lake Worth Estates, the Earman/C-17 Right-of-Way, as defined in the Easement Deeds from North Palm Beach Inc. to the Central and Southern Florida Flood Control District, predecessor to the South Florida Water Management District ("District"), is specifically excluded from each platted lot. The northernmost boundary of each lot appears to be the southernmost boundary of the right-of-way.

With respect to Plat No. 1, the issue is more complicated. North Palm Beach, Inc. obtained title to the land underlying the Earman/C-17 Right-of-Way by Special Warranty Deed dated November 9, 1955 from Bankers Life and Casualty Company. North Palm Beach, Inc. recorded Plat No. 1 on February 17, 1956. In the plat dedication, North Palm Beach, Inc. expressly reserved unto itself, its successors and assigns, the ownership and sole and exclusive use of the Lagoons and Waterways depicted on the plat. In a subsequent document dated January 3, 1957, North Palm Beach, Inc. dedicated the North Palm Beach Waterway, the Azure Lagoon, the Blue Lagoon and the Coral Lagoon to the Village of North Palm Beach. This dedication did not identify the Earman River.

The real issue appears to be the southernmost boundary of the lots along Anchorage Lane and Anchorage Drive. As Mr. Hogarth indicates, the southernmost boundary of the plat appears to extend to the centerline of the Earman River. Using his property as an example, the eastern property line, according to the plat, extends 300 feet from the edge of the Anchorage Lane right-of-way. However, according to the records maintained by the Property Appraiser's Office, the eastern property line extends only 215 feet or so from the Anchorage Lane right-of-way. The reason for this disparity is that the width of the Earman/C-17 Right-of-Way has been "carved out" from the property.

By Easement Deed dated September 17, 1956, North Palm Beach, Inc. granted the District "a perpetual easement and right for and to the exclusive use and enjoyment" of the Earman/C-17 Right-of-Way. As Mr. Hogarth correctly maintains, this easement did not convey ownership of the underlying property and was not conveyed until **after** the plat was recorded. Therefore, even if the deed conveying his lot to the original owner was executed after the Earman/C-17 Right-of-Way was established, and the owner took title subject to the easement, there is still a question as to ownership of the underlying property.

The issue of ownership can only be resolved by performing a thorough title search on each of the properties and/or litigating the ownership of the property. When each of these property owners purchased their properties, they were undoubtedly given surveys and issued title insurance policies. While I appreciate the concerns raised by Mr. Hogarth, there is no indication, based on my preliminary review of the public records, that the Village owns the property underlying the Earman/C-17 Right-of-Way. Therefore, the issue of ownership appears to be a civil matter between the property owners and North Palm Beach Properties or their title insurers.

Unless the Village wishes to incur the cost of conducting a comprehensive title search regarding the Earman/C-17 Right-of-Way, there is no further action to take at this time. Should you have any questions relative to the foregoing, please do not hesitate to contact me.